IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

Crl.Rev.Pet.No. 121 of 2007()

CRA.107/2000 of ADDL. SESSIONS COURT (ADHOC), THALASSERY
CC.9(A)/1998 of JUDICIAL FIRST CLASS MAGISTRATE COURT(MUNSIFF) TALIPARAMBA

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REVN. PETITIONER: APPELLANT/ACCUSED:

M.P. BHASKARAN NAMBIAR,
SON OF KUNHAPPA NAMBIAR, AGED 56 YEARS,
MANATHOOR PULLAYIKODI, LOTTERY AGENT,
ASWATHY LOTTERY AGENCY, PUZHAKKULANGARA LAKSHAM VEEDU, TALIPARAMBA AMSOM, DESOM, TALIPARAMBA TALUK KANNUR DISTRICT.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENTS: RESPONDENTS/COMPLAINANT AND STATE

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1. K.G. NARAYANAN NAIR,
SON OF GOVINDA PILLAI, SREEKANDAPURAM AMSOM,DESOM,
TALIPARAMBA TALUK, KANNUR DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.KAMMAPPU FOR R2

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR.J

Crl.R.P No. 121OF 2007

Dated this the 6th day of February 2007

ORDER

The accused in C.C. No. 9(A) of 1998 on the file of the JFCM Court-(Munsiff), Taliparamba, is the petitioner. He was found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act convicted and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1,000/- and in default of the payment of fine it was ordered that the petitioner shall undergo simple imprisonment for a period of one more month. Challenging the conviction and sentence the petitioner filed Crl.Appeal No. 107/2000 before the Additional Sessions Judge (Adhoc-I) Thalassery. The learned Sessions Judge confirmed the conviction, but modified the sentence . The substantive sentence was modified and reduced to imprisonment till the rising of the court. The petitioner was directed to pay a compensation of Rs.10,000/- to the respondent and in default of payment of compensation to undergo simple imprisonment for three months. Challenging those findings of the courts below this Crl.R.P.is filed.

2. The frist respondent filed a complaint alleging that Ext.P1 cheque was issued by the petitioner in discharge of a legally recoverable debt which was dishonoured and returned for want of sufficient funds in

the account maintained by the petitioner with the bank. Statutory notice was issued . But the amount was not repaid by the petitioner. Hence the complaint.

3. The first respondent gave evidence as PW1 . He gave evidence to the effect that the petitioner borrowed an amount of Rs. 10,000/- and issued Ext.P1 cheque He also deposed that when the cheque was presented for collection the same was dishonoured and returned for want of sufficient funds. The petitioner at the time of questioning under Section 313 of the Cr.P.C admitted the issuance of the cheque. According to him he gave signed blank cheque to the complainant as security. He further stated that even though he discharged the liability, the complainant did not return the cheque and misusing that cheque this complaint was filed. The petitioner did not adduce evidence to substantiate that contention. The evidence shows that Ext.P1 cheque was issued in discharge of a legally recoverable debt and when the same was presented for collection it was returned for want of sufficient funds in the account maintained by the petitioner with the bank. The complaint was filed after issuing notice and also after observing all formalities. So the finding of the courts below that petitioner is guilty of an offence punishable under

Section 138 of the Negotiable Instruments Act is correct and does not call for any interference. The substantive sentence also does not call for any interference. The compensation amount ordered is confirmed. But the default sentence imposed is on the higher side. So it is modified and reduced to simple imprisonment for two weeks. The petitioner can be given reasonable time to pay off the compensation and to appear and receive the substantive sentence.

4. In the result this Crl.R.P is disposed of in the following manner. The finding of the courts below that the petitioner is guilty of an offence under Section 138 of the Negotiable Instruments Act is confirmed. The conviction is confirmed. The substantive sentence and the compensation awarded are also confirmed. But the default sentence imposed is modified and reduced to simple imprisonment for two weeks. The petitioner is given three months time to pay off the compensation and to appear and receive the substantive sentence. . In case the petitioner fails to comply with the condition it is open to the Magistrate to execute the sentence after the expiry of the three months period.

K.PADMANABHAN NAIR,JUDGE

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